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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,364	12/08/2003	Michael T. Morman	KCX-654B (19124B)	2821

22827 7590 07/19/2006

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EXAMINER

CRAIG, PAULA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/730,364	Applicant(s) MORMAN ET AL.	
	Examiner Paula L. Craig	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 10-12, 15, 20-24 and 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13, 14, 16-19 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/28/04 12/27/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS 3/30/05 6/20/05</u> . |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I and Species II in the reply filed on May 19, 2006 is acknowledged. The restriction/election is made final. Applicant indicated that Species II includes Claims 1-10, 12-14, 16-19, and 25. Claims 10 and 12, however, appear to correspond to the embodiment of Fig. 4B, which is part of Species V. Claims 10-12, 15, and 20-24, are therefore withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Objections

2. Claims 13-14 are objected to because of the following informalities: In Claim 13, line 3 and Claim 14, line 2, "composite strips" and "folded composite regions" lack antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-9, 13-14, 16-19, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, line 13, Claim 3,

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line 2, Claim 13, line 3, Claim 17, line 2, Claim 18, line 5, and Claim 25, line 16, the relationship between parts of the absorbent article indicated by the terms "overlying", "superimposed", "under" and "underside" is unclear. In Claims 1 and 3, the meaning of the term "aligned with" is unclear. In Claim 13, line 2 and Claim 18, line 2, it is unclear if the claimed "strips" are the same as or different from the first and second strips of elastomeric material of Claim 1.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165517 A1 to Datta et al.

7. For Claims 1 and 25, Datta teaches an absorbent article including a chassis with a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Figs. 1-9, Abstract, and paragraph 52). An outer cover member extends longitudinally between the front and back waist regions (outer cover 42, Figs. 1, 2, 4-6, and 8-9, and paragraph 54). Datta teaches a bodyside liner extending longitudinally between the front and back waist regions (bodyside liner 44, fit panel 48, waist elastic members 58, leg elastic members 54, surge layer 148, wrapsheet 80, attachment panels 66, and containment flaps 56, Figs. 1-9 and

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paragraphs 11-20, 48, 54, 68-75, 81, and 99). An absorbent body structure is sandwiched between the outer cover member and the bodyside liner (absorbent core 28, Figs. 3 and 7 and paragraph 54). Datta teaches the bodyside liner including a material having an inherently extensible base layer of a fluid permeable material (material of bodyside liner 44 and wrapsheet 80, paragraphs 17, 60-62, and 68). Datta teaches the base layer being extendable to at least about 125% of its original dimension in a first direction essentially without fracture of the base layer material (paragraphs 48, 60-62, 68, and 100-105 and Table 2; note that Datta incorporates U.S. Patent No.6,552,245, which issued from U.S. Application No. 09/563,417). At least a first and a second strip of elastomeric material overlie and are attached to the base layer material, with a space between the strips such that a center untensioned region of the base layer material is bordered on at least two sides by composite regions of the elastomeric materials and the base layer material, the center region generally aligned with the absorbent body structure (strips are fit panels 48, waist elastic members 58, leg elastic members 54, attachment panel 66, and containment flaps 56, Figs. 1-9 and paragraphs 11-20, 54, 56, 68-75, 81, and 99). Datta teaches the center region of the untensioned base layer material being attached to the absorbent body structure (paragraphs 56, 72). The composite regions are stretchable in at least a second or transverse direction of the absorbent article (paragraphs 11-20, 29, 54, 68-75, 81, and 99).

8. For Claim 2, Datta teaches the article being a child's training pant, disposable diaper, incontinence article, or feminine hygiene article (paragraph 51).

9. For Claim 3, Datta teaches the first and second elastomeric materials being superimposed on and aligned with the lateral sides of the underlying base layer (fit panels 48, waist elastic members 58, leg elastic members 54, attachment panels 66, and containment flaps 56 are all aligned with the lateral sides of bodyside liner 44 to at least some extent; Figs. 1-9 and paragraphs 11-20, 54, 56, 68-75, 81, and 99).
10. For Claim 4, Datta teaches the base layer material including a non-woven material (paragraphs 19, 60-61, and 68).
11. For Claim 5, Datta teaches the nonwoven material being a spunbond material (paragraph 62). Datta teaches the base layer being a bicomponent material (paragraph 61). Datta also teaches a bicomponent spunbond material (Datta, paragraph 60; see col. 17, lines 11-43 of Roessler '245, which issued from U.S. Patent Application No. 09/563,417 and is incorporated in Datta).
12. For Claim 6, Datta teaches the first and second elastomeric materials including an elastic film (fit panel 48, paragraph 75). Datta teaches the first and second elastomeric materials being laminated to the base layer material (paragraphs 56 and 73-76).
13. For Claim 7, Datta teaches the first and second elastomeric materials including webs of elastomeric fibers (fit panel 48, paragraph 75).
14. For Claims 8 and 9, Datta teaches the elastomeric materials being attached to the base layer material in either a generally untensioned state or in a generally tensioned state (leg elastic members 54 and waist elastic members 58, paragraphs 20 and 72).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 13-14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta '517 in view of U.S. Patent No. 4,900,317 to Buell.

18. For Claim 13, Datta '517 teaches all the limitations of Claim 1, as described above in paragraph 7. Datta teaches the outer cover member and the composite regions of the bodyside liner both being elastic, and being formed of similar elastomeric materials (such as stretch-thermal laminate, neck-bonded laminate, stretch-bonded laminate, and other elastic materials; paragraphs 59, 69-72, and 75). Datta does not expressly teach the composite regions being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the

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chassis. However, this feature is well known in the art. Buell '317 confirms this and teaches elasticized composite strips being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the chassis (Figs. 1 and 3-7 and Abstract). Buell teaches that the diapers of his invention allow air flow, but contain body fluids and are cooler and self-dried to a greater extent than other diapers (col. 9, line 3, to col. 10, line 5, and col. 17, lines 30-36). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Datta '517 to include the composite regions being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the chassis, as taught by Buell, to contain body fluids while allowing air flow and self-drying, as taught by Buell.

19. For Claim 14, Datta teaches leg elastics (leg elastic members 54, Figs. 1-9 and paragraphs 71-72). Datta does not expressly teach leg elastics between the folded composite regions. Buell teaches leg elastics between folded composite regions (elastic elements 31 and 64, Figs. 3-7, col. 7, line 52 to col. 8, line 32, and col. 13, lines 17-43). It would have been obvious to modify Datta to include leg elastics between folded composite regions, for the same reasons as described above for Claim 13 in paragraph 18.

20. For Claim 16, Datta teaches portions of the composite regions of the bodyside liner being folded outboard of the absorbent body structure so as to define longitudinally

extending containment flaps on opposite lateral sides of the absorbent body structure (containment flaps 56, Fig. 3 and paragraph 69).

21. For Claim 17, Datta teaches the various components being assembled together and attached (paragraph 56). Datta does not expressly teach the composite regions being attached to an underside of the absorbent body structure. Buell '317 teaches the composite regions being attached to an underside of the absorbent body structure (securement means 27 and 38, Figs. 2-7, col. 5, line 64 to col. 6, line 4, and col. 14, lines 5-12). It would have been obvious to modify Datta to including attaching the composite regions to an underside of the absorbent body structure, for the same reasons as described above for Claim 13 in paragraph 18.

22. For Claim 18, Datta teaches the composite regions of the bodyside liner defining longitudinal strips extending outwardly from the center region and defining elastomeric side panels that are attached at side seams of the chassis to define a pant-like structure (Figs. 1-9 and paragraph 71). Datta does not teach the composite strips being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions also define the outer cover member of the chassis. This feature is taught by Buell '317, as indicated above for Claim 13 in paragraph 18. It would have been obvious to modify Datta to include this feature, for the same reasons as described above for Claim 13 in paragraph 18.

23. For Claim 19, Datta teaches the article being a child's training pant (paragraph 51).

Double Patenting

24. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

25. Claims 1 and 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 1 of copending Application No. 10/730,493 to Morman et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 of Morman '493 teaches first and second strips of elastomeric materials with a space between the strips, with the base layer between them being necked.

26. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,341,217 to Ferguson et al. shows an absorbent article with a unitary outer wrap which may function as both a topsheet portion and a backsheet portion. U.S. Patent No. 4,652,487 to Morman shows an elastic nonwoven fibrous web. U.S. Patent No. 5,269,775 to Freeland et al. shows an elastic topsheet. U.S. Patent No. 5,643,243 to Klemp shows first and second strips of elastomeric material with a space between the strips. U.S. Patent No. 5,695,849 to Shawver et al. shows an elastic nonwoven fibrous fabric which may be used as a containment flap or a bodyside liner. U.S. Patent No. 6,376,095 to Cheung et al. teaches elastic films. U.S. Patent No. 6,465,073 to Morman et al. shows a stretchable laminate. U.S. Patent Application Publication No. 2002/0058920 to Toyoda et al. teaches an outer cover which is continuous with containment flaps. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 6:30AM-3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig
Examiner
Art Unit 3761

PLC

PAULAKAEVA
SUPERVISORY PRIMARY EXAMINER

